

Case T-310/18**European Federation of Public Service Unions (EPSU)****and****Jan Goudriaan****v****European Commission****Judgment of the General Court (Ninth Chamber, Extended Composition), 24 October 2019**

(Social policy — Dialogue between the social partners at EU level — Agreement entitled ‘General framework for informing and consulting civil servants and employees of central government administrations’ — Joint request of the signatory parties seeking the implementation of that agreement at EU level — Refusal by the Commission to submit a proposal for a decision to the Council — Action for annulment — Challengeable act — Admissibility — Commission’s discretion — Autonomy of the social partners — Principle of subsidiarity — Proportionality)

1. *Action for annulment — Challengeable acts — Definition — Measures producing binding legal effects — Commission decision refusing to submit to the Council a proposal for a decision implementing at EU level an agreement concluded between the social partners — Included*
(Arts 155(2) and 263 TFEU)

(see paragraphs 20, 22-36)

2. *Social policy — Agreement on social policy — Social partner agreements — Implementation by a Council decision on a proposal from the Commission — Commission’s power of initiative — Scope — Joint request of the signatory parties — No obligation for the Commission to submit a proposal for a decision to the Council*
(Art. 17(2) TEU; Art. 155(2), TFEU)

(see paragraphs 51, 66, 67, 73, 74, 78, 79, 81, 82, 90, 93, 103)

3. *Acts of the institutions — Legal nature — Legislative act — Definition — Measures adopted following a procedure for the implementation, at EU level, of agreements concluded by the social partners — Not included*
(Arts 155(2) and 289 TFEU)

(see paragraph 69)

4. *Social policy — Agreement on social policy — Social partner agreements — Implementation by a Council decision on a proposal from the Commission — Commission’s power of initiative — Condition — Respect for the principle of democracy — Representativity of the signatories to the agreement — Compliance with the principles of subsidiarity and proportionality*
(Art. 17(1) TEU; Art. 155 TFEU)

(see paragraphs 75, 95, 96, 98, 137)

5. *Social policy — Agreement on social policy — Social partner agreements — Implementation by a Council decision on a proposal from the Commission — Commission’s power of initiative — Commission’s*

margin of discretion — Judicial review — Limits
(Art. 17(1) TEU; Art. 155 TFEU)

(see paragraphs 108-112)

Résumé

In the judgment in *EPSU and Goudriaan v Commission* (T-310/18), delivered on 24 October 2019, the General Court dismissed an action for annulment challenging a decision of the Commission refusing to submit to the Council a proposal for a decision implementing, at EU level, an agreement signed by the European social partners.

In December 2015, the social partners signed an agreement entitled ‘General framework for informing and consulting civil servants and employees of central government administrations’ (‘the Agreement’) on the basis of Article 155(1) TFEU. They then jointly requested the Commission to submit a proposal for the implementation of the Agreement at EU level by a decision of the Council adopted on the basis of Article 155(2) TFEU. However, in March 2018, the Commission informed the social partners of its refusal to submit such a proposal for a decision to the Council. The reasons for that refusal were, first, the specific nature of central government administrations given that they exercise the powers of a public authority; second, the fact that provisions of national law concerning information and consultation of staff in that sector are already in place in many Member States and, third, the existence of significant differences between the Member States as to the definition and perimeters of those administrations such that a decision of the Council implementing the Agreement would have a greater or lesser scope of application depending on the Member State in question.

The Court held, first of all, that the Commission’s refusal decision was an act open to challenge. First, it could not be classified as a preparatory act and, second, a possible broad discretion did not preclude the admissibility of the action.

Next, the Court emphasised that, where the social partners have negotiated and concluded an agreement on the basis of Article 155(1) TFEU and the signatory parties submit a joint request for the implementation of that agreement at EU level by a decision of the Council adopted on the basis of Article 155(2) TFEU, the Commission is not required to give effect to that request and it is for that institution to determine whether it is appropriate for it to submit a proposal to that effect to the Council.

The Court added, in that regard, that the Commission must not only verify the strict legality of the clauses of that agreement, but also assess whether implementation of the agreement at EU level is appropriate, including by having regard to political, economic and social considerations.

Finally, the Court held that the Commission has a broad discretion and, in the event of a refusal, the decision taken by the Commission must undergo a limited review by the Court.